

made any showing, compelling or otherwise, as to why his petition could not have been filed in a timely fashion.

4. Purcell has failed to make any prima facie showing as to how the grant of Webb's application would be inconsistent with the public interest, convenience and necessity. Purcell makes vague and unsupported allegations that the principals of Webb are unqualified. In point of fact, the only interest at issue is Purcell's private interest in collecting an alleged debt. The validity of Purcell's claim is properly a matter for decision in the courts of the State of Maryland. Purcell's complaint was filed on September 20, 1991 in the Circuit Court for Montgomery County, Maryland and has not yet come to trial.

5. Purcell has failed to meet the bedrock requirement of Section 309(d)(1) of the Act that a petition to deny be supported by an affidavit or documents of which official notice can be taken. Although Purcell has executed a boilerplate declaration, no official notice may be taken of the alleged promissory note attached to Purcell's complaint as it is neither dated nor executed.

6. The remedy for an untimely and defective petition to deny, such as that filed by Purcell, is return without consideration. See Section 73.3584(d) of the Rules.

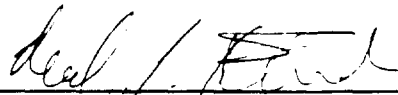
For the forgoing reasons, Webb Broadcasting, Inc. respectfully requests that the petition to deny its application filed by

Robert L. Purcell on October 28, 1991 be dismissed and given no further consideration.

Respectfully submitted,

WEBB BROADCASTING, INC.

By



Neal J. Friedman
Its Attorney

PEPPER & CORAZZINI
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

November 13, 1991

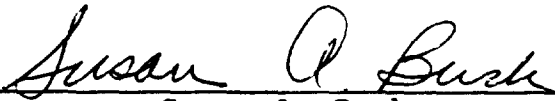
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CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served by U.S. mail, postage prepaid, first class on the 13th day of November, 1991, on the following individuals:

* Mr. Larry D. Eads
Federal Communications Commission
Mass Media Bureau
Room 302
1919 M Street. N.W.
Washington, DC 20554

James A. Koerner, Esq.
Baraff, Koerner, Olender & Hochberg
2033 M Street, N.W., Suite 700
Washington, DC 20036



Susan A. Burk

* Hand Delivery

EXHIBIT 4

PEPPER & CORAZZINI

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI
■ NOT ADMITTED IN D.C.

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
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(202) 296-0600

ROBERT LEWIS THOMPSON
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909 - 1988
TELECOPIER: (202) 296-5572

November 13, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

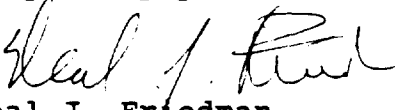
Re: Assignment of License, Avalon, NJ
(File No. BALH-910723HO)
Ocean Media, Inc.

Dear Ms. Searcy:

Transmitted herewith on behalf of Ocean Media, Inc., applicant in the above-referenced proceeding, are an original and four (4) copies of its Motion to Dismiss. Kindly direct this information to the Chief of the Mass Media Bureau.

Should any questions arise concerning this matter please communicate directly with the undersigned.

Very truly yours,


Neal J. Friedman

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)	
)	
GROUP SIX COMMUNICATIONS, INC.,)	
Assignor)	
)	
and)	File No. BALH-910723HO
)	
OCEAN MEDIA, INC.,)	
Assignee)	
)	
For Assignment of License of)	
Station WWOC-FM, Avalon, NJ)	
To: Chief, Mass Media Bureau		

MOTION TO DISMISS

Ocean Media, Inc. ("OMI") by its attorney and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended and Section 73.3584 of the Rules of the Commission, hereby moves to dismiss the Petition to Deny filed by Robert L. Purcell on October 28, 1991 as patently defective.^{1/} OMI is the proposed assignee of WWOC-FM, Avalon, New Jersey. Purcell's wholly frivolous pleading is an abuse of the Commission's processes filed for the sole purpose of harassing certain of OMI's principals who are also principals of an unrelated entity against whom Purcell is attempting to enforce an alleged debt in the courts of the State of Maryland.^{2/} In support thereof the following is shown.

^{1/} Out of an abundance of caution, OMI is also filing its Opposition based on the substantive issues raised in the Petition.

^{2/} OMI, together with Webb Broadcasting, Inc., an applicant for a new FM station at Ocean City, Maryland, also the target of a Petition to Deny Purcell has filed, Five Star Broadcasting, Inc., licensee of WDMV(AM), Ocean City, Maryland and Group Six, Inc., licensee of WWOC(FM), Avalon, New Jersey, are separately asking the Commission to impose sanctions pursuant to Section 1.80 of the Rules of the Commission.

1. Section 309(d)(1) of the Act provides that a Petition to Deny must: (1) be filed by a party in interest; (2) be filed within the time period established in the Act or by the Commission; (3) contain specific allegations that the petitioner is a party in interest and that grant of the application would be prima facie inconsistent with the public interest, convenience and necessity; and, (4) be supported by the affidavit of a person or persons with personal knowledge thereof. As will be shown below, Purcell fails to meet even a single one of these basic criteria.

2. Purcell has failed to demonstrate that he is a party in interest. He has made no showing that he is a resident of the service area of WWOC-FM, Avalon, New Jersey. See Citizens Communications Center v. FCC, 359 F.2d 994 (D.C. Cir. 1966) and Effingham Broadcasting Co., Inc., 51 FCC 2d 453 (1975). Purcell's claimed economic injury (the alleged failure of Five Star Broadcasting, Inc., a corporation wholly unrelated to OMI, to make timely payments on a promissory note) is not sufficient to give him standing. See FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1939).

3. Purcell's Petition is far too late. OMI's application was filed on July 23, 1991. It appeared on Public Notice on August 5, 1991 (Report No. 15053).^{3/} Section 73.3584 of the Rules requires that petitions to deny must be filed by the date specified. Under the rules then in effect, Purcell was required to file a petition to deny not later than September 5, 1991. Purcell

^{3/} OMI's assignment application was subsequently granted on September 13, 1991 (See Report No. 21211, released September 20, 1991) subject to a condition that closing not occur until WWOC's pending renewal application is granted.

failed to do so. The rule further states that extensions of time in which to file petitions to deny will only be granted unless the applicant consents or there is a "compelling showing" that unusual circumstances prevented the timely filing. Purcell has neither requested nor obtained OMI's consent to the late filing, nor has he made any showing, compelling or otherwise, as to why his petition could not have been filed in a timely fashion.

4. Purcell has failed to make any prima facie showing as to how the grant of OMI's application would be inconsistent with the public interest, convenience and necessity. Purcell makes vague and unsupported allegations that the principals of OMI are unqualified. In point of fact, the only interest at issue is Purcell's private interest in collecting an alleged debt. The validity of Purcell's claim is properly a matter for decision in the courts of the State of Maryland. Purcell's complaint was filed on September 20, 1991 in the Circuit Court for Montgomery County, Maryland and has not yet come to trial.

5. Purcell has failed to meet the bedrock requirement of Section 309(d)(1) of the Act that a petition to deny be supported by an affidavit or documents of which official notice can be taken. Although Purcell has executed a boilerplate declaration, no official notice may be taken of the alleged promissory note attached to Purcell's complaint as it is neither dated nor executed.

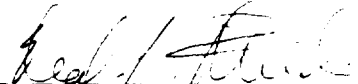
6. The remedy for an untimely and defective petition to deny, such as that filed by Purcell, is return without consideration. See Section 73.3584(d) of the Rules.

For the forgoing reasons, Ocean Media, Inc. respectfully requests that the petition to deny its application filed by Robert L. Purcell on October 28, 1991 be dismissed and given no further consideration.

Respectfully submitted,

OCEAN MEDIA, INC.

By



Neal J. Friedman
Its Attorney

PEPPER & CORAZZINI
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

November 13, 1991

NJF/sb
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CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served by U.S. mail, postage prepaid, first class on the 13th day of November, 1991, on the following individuals:

* Mr. Larry D. Eads
Federal Communications Commission
Mass Media Bureau
Room 302
1919 M Street. N.W.
Washington, DC 20554

James A. Koerner, Esq.
Baraff, Koerner, Olender & Hochberg
2033 M Street, N.W., Suite 700
Washington, DC 20036



Susan A. Burk


* Hand Delivery

CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Joint Motion for Sanctions was served by U.S. mail, postage prepaid, first class on the 14th day of November, 1991, on the following individuals:

* Mr. Larry D. Eads
 Federal Communications Commission
 Mass Media Bureau
 Room 302
 1919 M Street. N.W.
 Washington, DC 20554

 James A. Koerner, Esq.
 Baraff, Koerner, Olender & Hochberg
 2033 M Street, N.W., Suite 700
 Washington, DC 20036



Susan A. Burk

* Hand Delivery